HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO. 1390 OF 2007

DATED: 25.1.2007

Between:

S. Najma Begum

... Petitioner

and

Kadapa Municipal Corporation

... Respondent

HON'BLE SRI JUSTICE GODA RAGHURAM

W.P.NO.1390 OF 2007

ORAL ORDER:

The writ petition is directed against a notice dated 29.12.2006 issued by the respondent-Corporation under Section 452 of the Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') intimating the petitioner that she has made unauthorized constructions on premises bearing D.No.2-385, Railway Station Road and Eswar Singh Street, Kadapa, without applying for and obtaining a building permit and unauthorisedly.

The petitioner assails this notice on several grounds. Earlier in December 2005, the officials of the respondent-Corporation had made markings on the property and are stated to have threatened forcible dispossession for the purpose of road widening. The petitioner filed W.P.25919 of 2005, which was disposed of by this court on 5.12.2005 directing the respondent to follow the process of law, including under Sections 146 and 147 of the Act. On 4.4.2006, the respondent-Corporation called upon the petitioner to handover an

extent of 73.14 sq.mts on entitlement to receive compensation only for the structures. The petitioner declined. Thereupon, apprehending dispossession without the due process of law, the petitioner filed W.P.No.9774 of 2006, which was disposed of directing the respondents not to demolish the structures or take away any portion of the properties of the petitioner without due process of law, in particular the provisions under Section 147 of the Act.

According to the petitioner, since she refused to part with the land without compensation, the respondent has *malafide* initiated proceedings for removal of unauthorized constructions and has issued the impugned notice dated 29.12.2006, with a view to coerce the petitioner to part with the land without entitlement to the compensation, is the claim in this writ petition.

This contention of the petitioner does not commend acceptance by this court. The respondent is a State within the meaning of Art.12 of the Constitution. It may not dispossess any citizen of its property without the due process of law and if any official of the respondent-Corporation does so, such an official will be liable for prosecution or for damages and would be in severe jeopardy of his public office. At the same time,

the respondent is also the Regulator under the provisions of the Act and as such is obligated to ensure that all constructions within its jurisdiction conform to the provisions of law. Any unauthorized constructions or a construction in deviance of the approved permit, would be subversive of public interest and the orderly establishment and arrangement of civil society. It is therefore the province and the obligation of the respondent-Corporation to execute the provisions of the Act and ensure removal, demolition or otherwise regulate deviant or unauthorized constructions. The mere fact that the respondent has issued the impugned notice under Section 452 of the Act, subsequent (in point of time) to earlier efforts or alleged efforts by the respondent to take over the land for road widening, does not permit a compelling inference that the issuance of the impugned notice is *mala fide*. The petitioner does not plead, assert or demonstrate before this court that the constructions are in conformity with the provisions of the appropriate legislation with regard to applying for and obtaining a building permit for constructions. It therefore, prima facie, appears that the constructions are unauthorized and if so the respondent is not only well within its rights, but is also statutorily obligated to

issue the impugned notice.

On the aforesaid analysis, there appears no infirmity in the impugned notice, warranting interference. After all, it is a mere show cause notice. The petitioner is always at liberty to respond, if she so desires.

The writ petition is accordingly dismissed, after hearing Sri S.A. Newton, learned Standing Counsel for the respondent-Corporation. No costs.

GODA

RAGHURAM, J

Date: 25.1.2007
CVM